

**RESOLUTION NO. 2012-**

**A RESOLUTION OF THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, PROVIDING FOR THE SUBMISSION TO THE VILLAGE ELECTORS FOR APPROVAL OR DISAPPROVAL OF A SERIES OF PROPOSED AMENDMENTS TO THE VILLAGE CHARTER, AS PROVIDED BY THE REPORT OF THE CHARTER REVISION COMMISSION, IN ACCORDANCE WITH SECTION 7.06 OF THE VILLAGE CHARTER; PROVIDING REQUISITE BALLOT LANGUAGE FOR SUBMISSION OF THE CHARTER AMENDMENTS TO THE ELECTORATE; CALLING A SPECIAL ELECTION ON THE PROPOSED CHARTER AMENDMENTS TO BE HELD ON TUESDAY, THE 6<sup>TH</sup> DAY OF NOVEMBER, 2012, IN CONJUNCTION WITH THE GENERAL ELECTION BEING HELD ON SAID DATE; PROVIDING FOR VOTING AT THE POLLS; PROVIDING FOR NOTICE OF ELECTION; PROVIDING FOR REQUISITE BALLOT LANGUAGE; PROVIDING FOR INCLUSION IN THE CHARTER; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, pursuant to Section 7.06 of the Village Charter, the Charter Revision Commission (the “Charter Commission”) has determined that a revision to the Village Charter is needed and has drafted the six (6) proposed charter amendments (the “Charter Amendments”) which are described herein; and

**WHEREAS**, the report of the Charter Commission requested the Council to place the proposed Charter Amendments on the ballot for the next scheduled election, which is the November 6, 2012 general election; and

**WHEREAS**, pursuant to Section 7.06 of the Village Charter, the Village Council is required to submit the Charter Amendments to the electors of the Village for approval or rejection.

**NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals Adopted.** That each of the above stated recitals is hereby adopted and confirmed.

**Section 2. Charter Amendments.** That, subject to the requirements of Section 8 of this Resolution, pursuant to Section 7.06 of the Village Charter, the Village Charter of the Village of Key Biscayne, Florida, is hereby amended by amending the Village Charter sections described below in Parts A, B, C, D, E and F, to read as follows:<sup>1</sup>

**Part A.** That subsection (b) “Capital Projects” of Section 3.07 “Expenditure of Village funds” of the Village Charter is amended, to read as follows:

**Section 3.07. - Expenditure of Village funds.**

(a) *Generally.* No funds of the Village shall be expended except pursuant to duly approved appropriations.

(b) *Capital Projects.* The Council may authorize expenditures for: (I) the acquisition, lease, construction, renovation, or improvement of public buildings or facilities; (ii) purchase or lease of land; or (iii) the purchase of equipment. Each of the categories I, ii and iii, irrespective of cost, is a "Capital Project". A resolution or ordinance, as required, approving a Capital Project shall contain at a minimum a description and the projected cost of the Capital Project and be specifically labeled "Capital Project Authorizing Resolution or Ordinance" ("Capital Project Legislation").

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**PartB.** That subsection (c) “Quorum and voting” of Section 4.01 “Council meeting procedure” of the Village Charter is amended, to read as follows:

**Section 4.01. - Council meeting procedure.**

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(c) *Quorum and voting.* Any four (4) members of the Council shall constitute a quorum but a smaller number may adjourn from time to time and may compel the attendance of absent members in a manner and subject to the penalties prescribed by the rules of the Council. Voting on ordinances ~~and resolutions~~ shall be by roll call on final action and shall be recorded in the

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minutes. Except as otherwise specially provided in this Charter, no action of the Council shall be valid or binding unless adopted by the affirmative votes of at least four (4) Council Members. In the event that four (4) or more members of the Council are ineligible to vote on a particular matter due to required abstention pursuant to Florida law, then the remaining members of the Council may vote and approve such matter by unanimous vote.

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**Part C.** That subsection (b) of Section 4.14 “Special Assessments” of the Village Charter is amended, to read as follows:

**Section 4.14. - Special Assessments.**

Properties may be specially assessed according to law; however, no properties shall be specially assessed by the Village, unless:

(a) A majority of the owners of the properties to be specially assessed petition the Village for a special assessment, or

(b) An election of the property owners to be specially assessed is held to approve the special assessment and a majority of the property owners voting, one (1) vote per property, on a proposed special assessment vote in its favor. The Village Council shall adopt, by ordinance, notice provisions and procedures for conducting such elections. The Village shall utilize mail-in ballots for elections held pursuant to this section.

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**PartD.** That subsection (e)(ii) “Submission to electors” of Section 5.02 “Initiative and referendum” of the Village Charter is amended, to read as follows:

**Section 5.02. - Initiative and referendum.**

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(e) *Action on petitions.*

**(I) Action by Council.** When an initiative or referendum petition has been finally determined sufficient, the Council shall promptly consider the proposed initiative ordinance or reconsider the referred ordinance by voting its repeal, all in the manner provided in Article IV. The repeal of an ordinance relating to the levy of ad valorem taxes shall be by resolution.

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If the Council fails to adopt a proposed initiative ordinance without any change in substance within forty-five (45) days or fails to repeal the referred ordinance within thirty (30) days (or, in the case of a referendum authorized pursuant to paragraph (ii)(B) of subsection (a) of this Section, within five (5) days after the date on which the petition is determined to be sufficient), it shall submit the proposed or referred ordinance to the electors of the Village. If the Council fails to act on a proposed initiative ordinance or a referred ordinance within the time period contained in paragraph (I) of subsection (e) of this Section, the Council shall be deemed to have failed to adopt the proposed initiative ordinance or failed to repeal the referred ordinance on the last day that the Council was authorized to act on such matter.

(ii) *Submission to electors.* The vote of the Village on a proposed or referred ordinance shall be held the earlier of: (a) the next regularly scheduled Mayoral or Council Member position election, which is not a primary election; or (b) the next regularly scheduled countywide election, which is not a primary election, not less than thirty (30) or more than sixty (60) days from the date the Council acted or was deemed to have acted pursuant to paragraph (I) of subsection (e) of this Section that the petition was determined sufficient. ~~If no election is to be held within the period described in this paragraph, the Council shall provide for a special election, except that the Council may, in its discretion, provide for a special election at an earlier date within the described period.~~ Copies of the proposed or referred ordinance shall be made available at the polls.

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**Part E.** That subsection (b) “Submission to electors” of Section 6.02 “Procedure to amend” of the Village Charter is amended, to read as follows:

**Section 6.02. - Procedure to amend.**

(a) *Initiation.* This Charter may be amended in two (2) ways:

(I) *By ordinance.* The Council may, by ordinance, propose amendments to this Charter and upon passage of the initiating ordinance shall submit the proposed amendment to a vote of the electors at the next general election held within the Village or at a special election called for such purpose.

(ii) *By petition.* The electors of the Village may propose amendments to this Charter by petition. Each petition proposing amendments to this Charter shall be commenced, in the form, filed, certified as to its sufficiency and/or withdrawn in the same manner as an ordinance proposed by initiative pursuant to Section 5.02.

(b) *Submission to electors.* Upon certification of the sufficiency of a petition, the Council shall submit the proposed amendment to a vote of the electors at to be held the earlier of: (a) the next regularly scheduled Mayoral or Council Member position election, which is not a

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~~primary election; or (b) the next regularly scheduled countywide general election, which is not a primary election the next election if such election is scheduled to be held not less than sixty (60) days or more than one hundred twenty (120) days from the date on which the petition was certified or at a special election called for such purpose. A special election, if necessary, shall be held not less than sixty (60) days or more than one hundred twenty (120) days from the date on which the petition was certified.~~

(c) *Results of election.* If a majority of the qualified electors voting on a proposed amendment vote for its adoption, it shall be considered adopted upon certification of the election results. If conflicting amendments are adopted at the same election, the one receiving the greatest number of affirmative votes shall prevail to the extent of such conflict.

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**PartF.** That Section 7.06 “Charter revision” of the Village Charter is amended, to read as follows:

**Section 7.06. - Charter revision.**

At its first regular meeting in December of every ~~tenth~~ fifth (510th) year ~~after the adoption of this Charter,~~ commencing ~~in~~ with December ~~2021~~ 1996, the Council shall appoint a Charter revision commission (the "Charter Revision Commission") consisting of five (5) persons, one (1) of whom shall be a member of the Council serving a second consecutive term as Council Member and four (4) of whom shall be electors of the Village. If there are no Council Members serving a second consecutive term, the Council shall appoint to the revision commission one (1) Council Member. The Mayor shall not be eligible for appointment to the Charter Revision Commission. The Charter Revision Commission shall commence its proceedings within forty-five (45) days after appointment by the Council. If the Charter Revision Commission determines that a revision is needed, it shall draft such amendments to this Charter as it deems appropriate and submit the same to the Council not later than April 1 of the year following appointment. The report of the Charter Revision Commission may grant to the Council the option of placing the proposed amendments on the ballot for the next scheduled Village Mayoral or Council, countywide, statewide, or federal election. Otherwise, the Council shall, not less than thirty (30) days or more than sixty (60) days after submission of the proposed amendments to the Council, submit them to the electors of the Village in accordance with the provisions of Section 6.02, except that the provisions of subsections (a) and (b) of such Section shall not apply.

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**Section 3. Election Called.** That a special election is hereby called, to be held on Tuesday, the 6th day of November, 2012, in conjunction with the general election being held on the same date, to present to the qualified electors of the Village of Key Biscayne, the ballot questions provided in Section 4 of this Resolution.

**Section 4. Form of Ballot.** That the form of ballot for the Charter Amendments provided for in Section 2 of this Resolution shall be substantially as follows:

**“1. Leases of Land and Public Facilities To Comply With Charter Procedures Required For Capital Projects.**

The Village Charter currently does not define the term “Capital Project” to include “leases” for land or public facilities. It is proposed that the Village Charter be amended to require a description of the lease; cost; and the description of the lease as a Capital Authorizing Resolution or Ordinance.

Shall the above- described Charter amendment be adopted?

[   ]   Yes

[   ]   No

**2. Resolutions of the Village Council May Be Approved By Voice Vote.**

The Village Charter currently requires that approval of resolutions shall be by a roll call vote. The Charter is proposed to be amended to allow the Village to approve resolutions by voice vote, which is a common practice for local governments.

Shall the above-described Charter amendment be adopted?

[   ]   Yes

[   ]   No

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**3. Special Assessment Elections Shall Be By Mail-In Ballot; Requiring Adoption Of Procedures For Such Elections.**

The Village Charter currently does not provide specific procedures for special assessment elections. The proposed Charter amendment clarifies that a special assessment election shall be by mail-in ballot, which is consistent with the Village's previous practice. The proposed Charter amendment will require the Village Council to adopt, by ordinance, notice provisions and procedures for conducting such elections.

Shall the above- described Charter amendment be adopted?

☐ Yes

☐ No

**4. Scheduling Of Initiative Petitions And Referendum Elections.**

To maximize voter turnout, the Charter is proposed to be amended to require an initiative or referendum election to be held the earlier of: (a) the next regularly scheduled Mayoral or Council Member election, which is not a primary election; or (b) the next regularly scheduled countywide election, which is not a primary election.

Shall the above-described Charter amendment be adopted?

☐ Yes

☐ No

**5. Scheduling Of Elections On Charter Amendments.**

To maximize voter turnout for elections on Charter amendments, the Charter is proposed to be amended to require an election on Village Charter amendments to be

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held the earlier of: (a) the next regularly scheduled Mayoral or Council Member election, which is not a primary election; or (b) the next regularly scheduled countywide election, which is not a primary election.

Shall the above-described Charter amendment be adopted?

☐ Yes

☐ No

**6. Increasing Charter Review Commission Meeting Requirements from Every Five Years to Every Ten Years.**

The Village Charter currently requires the Charter Revision Commission to meet every five (5) years. It is proposed to amend the Charter to change the Charter Revision Commission's meeting requirement from every five years to every ten (10) years.

Shall the above- described Charter amendment be adopted?

☐ Yes

☐ No”

**Section 5. Balloting.** That balloting shall be conducted between the hours of 7:00 a.m. to 7:00 p.m. on the date of the election. Absentee ballots shall be available. Early voting shall be provided in conjunction with the general election. All qualified Village electors who are timely registered in accordance with law shall be entitled to vote. The Village Clerk is authorized to obtain any necessary election administration services from the Miami-Dade County (the "County") Supervisor of Elections. The County registration books shall remain open at the Office of the County Supervisor of Elections until the date at which the registration books shall close in

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accordance with the provisions of the general election laws. The Village Clerk and the County Supervisor of Elections are hereby authorized to take all appropriate action necessary to carry into effect and accomplish the provisions of this resolution. Pursuant to Section 2-102 of the Village Code, this election shall be canvassed by the Village Clerk with assistance from the County Supervisor of Elections, or as required by law.

**Section 6. Notice of Election.** That notice of said election shall be published in accordance with Section 100.342, Fla. Stat., in a newspaper of general circulation within the Village at least 30 days prior to said election, the first publication to be in the fifth week prior to the election (to-wit: during the week commencing Sunday, September 30, 2012), and the second publication to be in the third week prior to the election (to-wit: during the week commencing Sunday, October 14, 2012), and shall be in substantially the following form:

“NOTICE OF SPECIAL ELECTION

PUBLIC NOTICE IS HEREBY GIVEN THAT PURSUANT TO RESOLUTION NO 2012-\_\_\_\_\_ ADOPTED BY THE VILLAGE COUNCIL OF THE VILLAGE OF KEY BISCAYNE, FLORIDA (THE “VILLAGE”), A SPECIAL ELECTION HAS BEEN CALLED AND ORDERED TO BE HELD WITHIN THE VILLAGE, IN CONJUNCTION WITH THE GENERAL ELECTION, ON TUESDAY, THE 6TH DAY OF NOVEMBER, 2012, AT WHICH TIME THE FOLLOWING CHARTER AMENDMENT PROPOSALS SHALL BE SUBMITTED TO THE QUALIFIED ELECTORS OF THE VILLAGE.

Those certain six (6) proposed amendments to the Village Charter, which are commonly referred to by the following ballot titles:

1. Leases of Land and Public Facilities To Comply With Charter Procedures ~~Required~~ For Capital Projects.
2. Resolutions of the Village Council May Be Approved By Voice Vote.

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3. Special Assessment Elections Shall Be By Mail-In Ballot; Requiring Adoption Of Procedures For Such Elections.
4. Scheduling Of Initiative Petitions And Referendum Elections.
5. Scheduling Of Elections On Charter Amendments.
6. Increasing Charter Review Commission Meeting Requirements from Every Five Years to Every Ten Years.

**Polling place information, the enabling Resolution including the full text of the proposed Village Charter Amendments and the ballot questions, are available at the office of the Village Clerk located at 88 West McIntyre Street, Key Biscayne, Florida 33149.**

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**Village Clerk”**

**Section 7. Copies.** That copies of this Resolution concerning the Charter Amendments are on file at the office of the Village Clerk, located at 88 West McIntyre Street, Key Biscayne, Florida 33149, and is available for public inspection, during regular business hours.

**Section 8. Effectiveness.** That the Charter Amendments provided for in Section 2 above shall become effective only if the majority of the qualified electors voting on the specific Charter Amendment vote for its adoption, and it shall be considered adopted and effective upon certification of the election results. Following adoption of the Charter Amendments, the Village Clerk shall file the adopted Charter Amendments with the Clerk of the Circuit Court of Miami-Dade County, Florida.

**Section 9. Inclusion in the Charter.** That subject to the requirements of Section 8 above, it is the intention of the Village Council and it is hereby provided that the Charter Amendments shall become and be made a part of the Charter of the Village of Key Biscayne,

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Florida; that the Sections of this Resolution may be renumbered or relettered to accomplish such intention.

**Section 10.**    **Severability.**    The provisions of this Resolution are declared to be severable and if any section, sentence, clause or phrase of this Resolution shall for any reason be held to be invalid or unconstitutional, such decision shall not affect the validity of the remaining sections, sentences, clauses, and phrases of this Resolution but they shall remain in effect, it being the legislative intent that this Resolution shall stand notwithstanding the invalidity of any part.

**Section 11.**    **Effective Date of Resolution.**    That this Resolution shall become effective July 18, 2012.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
MAYOR FRANKLIN H. CAPLAN

ATTEST:

\_\_\_\_\_  
CONCHITA H. ALVAREZ, MMC, VILLAGE CLERK

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

\_\_\_\_\_  
VILLAGE ATTORNEY

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